

MARTIN M. SORENSON

JANUARY 31, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 1876]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1876), for the relief of Martin M. Sorenson, having considered the same, report favorably thereon with amendment and recommend that the bill as amended do pass.

The amendment is as follows:

On page 1, line 6, strike out "\$697.35" and insert in lieu thereof "\$592.50".

PURPOSE

The purpose of the proposed legislation is to pay Martin M. Sorenson of New Orleans, La., the sum of \$592.50 in full settlement of all claims against the United States for pay and allowances for 45 days terminal leave due him as an incident of his service as a commissioned officer in the United States Coast Guard Reserve.

STATEMENT OF FACTS

Mr. Martin Sorensen was commissioned a lieutenant commander in the United States Coast Guard Reserve on May 29, 1943, and was placed on active duty. On October 31, 1945 he was advised by the Commandant of the Coast Guard that he could not be retained on active duty beyond his 64th birthday on February 6, 1946. He was authorized to take his accumulated leave prior to detachment, and he departed on leave on November 16, 1945.

On November 21, 1945, a law took effect which permitted members of the armed services on terminal leave to become civilian employees of the Government without giving up their terminal leave. Mr. Sorensen when advised of this law requested that he be restored to his former civil service status at the end of his terminal leave. The Coast

Guard authorities neglected to point out that Mr. Sorensen's reply had directed a restoration which would not be as advantageous to him as would an immediate resotation to civil service status as permitted by the law. As pointed out in the memorandum furnished the committee by the Department of the Treasury, if Mr. Sorensen had on the date he returned from leave, December 7, 1945, reentered civil employment the Coast Guard would have received precisely the same amount of service, but Mr. Sorensen would have received his terminal leave pay and in addition his civilian pay for the period. It is also noted in that memorandum that Mr. Sorensen only took 20 days of the 65 days of terminal leave he had coming to him before he returned to his work.

After a complete review of the facts outlined in the report and memorandum of the Treasury Department, the committee finds that the bill is meritorious, and therefore recommends its favorable consideration.

The report of the Treasury Department and the attached memorandum, the letter of the Assistant Comptroller General of the United States, and the letter of the Civil Service Commission are as follows:

TREASURY DEPARTMENT,
Washington, January 13, 1956.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to the request of your committee for the views of the Treasury Department on H. R. 1876, for the relief of Martin M. Sorensen.

The purpose of H. R. 1876 is to authorize payment to Martin M. Sorensen, New Orleans, La., of the sum of \$697.35 in full settlement of all claims against the United States for pay and allowances for 45 days terminal leave which he allegedly should have received as an incident to his service as a commissioned officer in the United States Coast Guard Reserve.

The facts and certain observations pertinent to the consideration of H. R. 1876 are set forth in the attached memorandum. The facts indicate that the Government received services of Mr. Sorensen for which he could, had he followed an appropriate course of action, have received \$592.50 in additional compensation.

The Treasury Department would not object to the enactment of H. R. 1876, provided the sum of \$592.50 is substituted for the sum of \$697.35 in line 6 of the bill.

The Bureau of the Budget has indicated that it would have no objection to the submission of this report to your committee. The Bureau has asked that the enclosed copies of letters from the General Accounting Office and the Civil Service Commission be made available to your committee.

Very truly yours,

DAVID W. KENDALL,
Acting Secretary of the Treasury.

MEMORANDUM TO ACCOMPANY A REPORT TO THE HOUSE COMMITTEE ON THE
JUDICIARY ON H. R. 1876, FOR THE RELIEF OF MARTIN M. SORENSON

Martin M. Sorensen, a civilian inspector of hulls in the Coast Guard, was commissioned a lieutenant commander in the Coast Guard Reserve on May 29, 1943, and placed on active duty. He continued, however, to perform the same sort of marine inspection duties as he had performed as a civilian employee. On October 31, 1945, the Commandant advised Sorensen that he could not be retained in the Reserve beyond his 64th birthday, which was on February 8, 1946, and that he was authorized to take accumulated leave prior to detachment. Pursuant to this advice Sorensen departed on 65 days' leave on November 16, 1945.

On November 21, 1945, an act was approved which permitted members of the Armed Forces on terminal leave to become civilian employees of the Government without giving up their terminal leave. On December 4, 1945, the district Coast Guard office wired the Commandant transmitting a message from Sorensen

indicating his desire to take advantage of this measure and "requesting that my terminal leave be paid to me in cash at the expiration of which on February 8, 1946, I request I be restored to my former civil service status." The district Coast Guard officer asked to be advised, and the Commandant wired back to advise Sorensen "to make application your office for restoration to former civilian position upon separation from Coast Guard Reserve."

It may be inferred from these dispatches that Sorensen did not quite understand the provisions of the act of November 21, 1945, because he requested action which would not appear to have been the most favorable to him, and that while the Commandant advised how Sorensen could effect the action he had requested, the Commandant did not point out the alternative which would have been to Sorensen's advantage.

Despite the fact that under the new law the action most advantageous to Sorensen would have been for him to reenter civilian employment immediately, the record shows that he returned from leave after taking only 20 of the 65 days granted him, and remained on active military duty until he reached the age of 64 on February 8, 1946, when he resumed his civilian position.

If Sorensen had on December 7, 1945, reentered civilian employment rather than return to military duty, the Coast Guard would have received from him precisely the same amount of service. Sorensen, however, would have received not only his military pay and allowances for the 45 days of unused leave but also the civilian pay for that period. This pay would have been \$592.50.

Since the Government had the benefit of services of Sorensen for which he would have, except for a technical misunderstanding of the proper way to become eligible, received \$592.50, and since a possible precedent exists in Private Law 818, 81st Congress, which involved a similar though not the identical set of facts, the Treasury Department would not object to private relief for Sorensen in the amount of \$592.50.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington 25, D. C., July 29, 1955.

Hon. ROWLAND R. HUGHES,
Director, Bureau of the Budget.

DEAR MR. HUGHES: Reference is made to letter dated July 19, 1955, from the Assistant Director, Legislative Reference, enclosing a copy of a proposed report of the Treasury Department on H. R. 1876, 84th Congress, entitled, "A bill for the relief of Martin M. Sorensen," and requesting an expression of our views on the matter.

H. R. 1876 would authorize and direct the Secretary of the Treasury to pay Martin M. Sorensen the sum of \$697.35, in full settlement of all claims by him against the United States for pay and allowances for 45 days' terminal leave incident to his service as a commissioned officer in the United States Coast Guard Reserve.

Similar bills for the relief of Mr. Sorensen were introduced in the 81st and 83d Congresses. See H. R. 9730, 81st Congress, 2d session, and H. R. 2590, 83d Congress, 1st session.

It appears that on May 29, 1943, Mr. Sorensen, a civilian employee in the Bureau of Marine Inspection and Navigation, United States Coast Guard, was appointed a lieutenant commander in the Coast Guard Reserve. Apparently he immediately was ordered to active duty under his Reserve commission and served on active duty until February 8, 1946, when he became 64 years of age and, therefore, was discharged by reason of having reached the maximum age for serving as a commissioned officer of the Coast Guard Reserve. On February 9, 1946, he resumed his civilian employment with the Coast Guard.

By letter dated October 31, 1945, the Commandant of the Coast Guard advised Mr. Sorensen that he would be discharged from the Coast Guard Reserve on February 8, 1946, and informed him that if he wished to use his accumulated leave, the district Coast Guard officer was authorized to grant such leave as he might request. On November 15, 1945, Mr. Sorensen acknowledged receipt of the Commandant's letter and requested restoration to his civilian position as of the date of his discharge. Also, at the same time, he was granted 65 days' leave, the entire balance to his credit, and he departed on his leave on November 16, 1945.

The act of November 21, 1945 (59 Stat. 584, 5 U. S. C. 61a-1), provided in effect that certain former civilian employees of the Government on terminal leave from military duty could be reemployed in their civilian positions and receive

concurrently terminal-leave pay and the compensation of their civilian positions. On December 4, 1945, Mr. Sorensen advised the Coast Guard that he desired to take advantage of that law and he requested that his terminal leave be paid to him in cash on February 8, 1946. Also, he again requested restoration to his civilian position upon his discharge from the Coast Guard Reserve. On December 5, 1945, he was advised to apply for restoration to his civilian position upon separation from the Reserve. Mr. Sorensen returned to duty as a commissioned officer on December 7, 1945, having used only 20 days of his leave, and he continued in a duty status until his discharge on February 8, 1946. In a letter of October 30, 1946, to the Commandant of the Coast Guard, Mr. Sorensen said that he was recalled to active duty on December 7, 1945, because of the enormous amount of work in his Coast Guard district. That statement, however, is not supported by any orders and, as the letter of October 30, 1946, indicates that his return to duty was predicated upon being paid for his leave as requested in his communication of December 4, 1945, it appears that Mr. Sorensen could have remained on terminal leave, had he so desired.

Copies of various communications between Coast Guard Headquarters and the district Coast Guard officer on file in our office suggest that, due to a shortage of funds to pay civilian personnel, the Coast Guard might have been unable to restore Mr. Sorensen to his civilian position any appreciable length of time prior to his discharge from the Coast Guard Reserve, even had he requested restoration at an earlier date than February 9, 1946.

The leave laws applicable at the time of Mr. Sorensen's discharge did not authorize a cash payment on discharge for accrued leave of members of the Armed Forces. And, since Mr. Sorensen was not restored to his civilian position until after his status as a commissioned officer had been terminated, the act of November 21, 1945, is not applicable to his case. He could not have been retained on active duty in a terminal-leave status with pay after February 8, 1946, because that was after his 64th birthday. Consequently a claim by Mr. Sorensen for pay for his lost terminal leave properly was denied.

The Treasury Department would report favorably on this bill, citing as a precedent for favorable action Private Law 818, 81st Congress, approved August 17, 1950, for the relief of John F. Oetli. While Mr. Oetli also lost leave on his discharge from the Coast Guard Reserve upon reaching the statutory age limit, the legislative history of Private Law 818 indicates that the loss in his case was occasioned by administrative error in not restoring him to his civilian position at an earlier date. There is no indication of any such administrative error in Mr. Sorensen's case. He was restored to his civilian position upon his discharge, precisely as he had requested. Moreover, apparently due to lack of funds, it seems doubtful that he could have been restored to his civilian position at a much earlier date than February 9, 1946, the date he was restored to such position. It may be noted that by letter of September 9, 1948, B-79636, to the Director, Bureau of the Budget, we expressed the view that Mr. Oetli's claim appeared to be without merit.

We perceive little or no merit in H. R. 1876. Mr. Sorensen's claim is for money that would have accrued to him had he been restored to his civilian position on December 7, 1945, instead of February 9, 1946. During that period he was, by his own choice, on active duty with the Coast Guard and did not perform any duty as a civilian employee. In such circumstances his claim for civilian pay appears to be without justification.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

UNITED STATES CIVIL SERVICE COMMISSION,
Washington 25, D. C., November 2, 1955.

Mr. ROGER W. JONES,
*Assistant Director, Legislative Reference,
Bureau of the Budget, Washington 25, D. C.*

DEAR MR. JONES: This is in reply to your letter of July 19, 1955 requesting the views of the Civil Service Commission on H. R. 1876, a bill for the relief of Martin M. Sorensen.

The Commission does not favor this bill.

Mr. Sorensen was employed as an assistant inspector of hulls in the Bureau of Marine Inspection and Navigation, United States Coast Guard. He left his position on May 29, 1943, when he was commissioned as a lieutenant commander

in the Coast Guard Reserve. In a letter dated October 31, 1945, Mr. Sorensen was notified that the Coast Guard Reserve laws did not permit his retention in the service beyond his 64th birthday and it would be necessary to effect his honorable discharge on February 8, 1946. He was further advised that he would be permitted to take such of his accumulated leave as he desired, but that it was necessary for him to use the leave prior to his discharge. Mr. Sorensen was entitled to 65 days' leave.

On November 16, 1945, Mr. Sorensen departed his station on leave. On December 7, 1945, after using only 20 days of his leave, he returned to duty. The record shows no reason for his early return. He was subsequently discharged on February 8, 1946. On February 9, 1946, he returned to his civilian position in the Coast Guard.

At the time of his discharge, Mr. Sorensen had to his credit 45 days of unused leave. He filed a claim with the General Accounting Office for \$697.35 representing pay and allowances for 45 days terminal leave. The Comptroller General denied the claim on January 2, 1947, with the comment that, "the statutes provide no authority to allow pay after release from active duty in lieu of leave not granted prior to such release."

What the law does provide is that a person on terminal leave from the Armed Forces may enter or reenter the employment of the United States and may receive both the compensation from his Federal position and the compensation from his terminal leave (act of November 21, 1945, 5 U. S. C. 61a-1). Under this statutory provision, Mr. Sorensen would have been able to return to his civilian position 45 days earlier and would have received both the pay for that position and the pay and allowances for the period of terminal leave as an officer of the Coast Guard.

The report on this bill submitted by the Secretary of the Treasury states that the failure to place Mr. Sorensen on terminal leave and to apprise him of the provisions of the act of November 21, 1945, appears to have resulted from oversight or administrative error. He has no objection to the bill as a means of correcting that oversight or error. His conclusion, however, is that the extent of Mr. Sorensen's claim is more correctly measured by the amount of his salary in his civilian position for 45 days, and it is suggested that the sum of \$592.50 be substituted for \$697.35 in line 6 of the bill.

The inability of Mr. Sorensen to take advantage of the provisions of the act of November 21, 1945, was admittedly the result of administrative error. Administrative errors occur every day and in many forms. We do not believe it is equitable to single out this individual case for favored treatment when other less fortunate persons whose cases cannot be corrected by administrative action have not been able to get relief from administrative error. We do not, therefore, favor this bill.

By direction of the Commission:

Sincerely yours,

PHILIP YOUNG, *Chairman.*

